



International Service for Human Rights
(ISHR)

RIGHT TO ACCESS INTERNATIONAL BODIES
HUMAN RIGHTS DEFENDERS BRIEFING PAPERS SERIES

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PREFACE

This briefing paper examines the scope of the right to access international bodies, with particular emphasis on human rights defenders and their work. This paper draws together the various international standards for the protection of this right, in addition to examining the different challenges to this right for human rights defenders.

The primary audience of this paper are **human rights defenders** working at the international, regional, and national levels. This paper seeks to present relevant information in a simple and accessible manner to defenders, and act as a practical tool to support them in their work. It can be used as a resource or background reading for specific trainings for defenders on this topic, in addition to assisting in national advocacy or awareness raising efforts on the right to access international bodies.

This paper may also be of use to **national human rights institutions** (NHRIs) when dealing specifically with defenders' issues. In addition, it can be used as resource material for NHRIs when providing advice to States in formulating or reviewing legislation relating to the right to access international bodies.

This briefing paper also collates and references the work of the UN treaty bodies and the UN Special Rapporteur on human rights defenders on the right to access international bodies in relation to defenders. **Academics, students, and a wider audience** may therefore also find this paper of use as a guide to the international standards for the protection of the right to access international bodies for defenders.

RIGHT TO ACCESS INTERNATIONAL BODIES

I. What is the right to access international bodies?

The principal instrument for the protection of the rights of human rights defenders, the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms* (the Declaration on human rights defenders), enshrines the right of human rights defenders to access and communicate with international bodies and mechanisms who deal with human rights. Such mechanisms could include United Nations (UN) bodies such as the Human Rights Council, its special procedures, the universal periodic review mechanism, the treaty monitoring bodies and other UN mechanisms with a mandate to protect human rights such as UN peacekeeping missions, UN country teams and other specialised agencies. Other examples also include non-UN bodies, both non-governmental and inter-governmental, that have a general or specific competency to consider human rights issues, such as organs of the European Union.

RIGHT TO ACCESS INTERNATIONAL BODIES

The Declaration on human rights defenders protects the right to access international bodies under the following:

Article 9(4)

To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to **unhindered access to and communication with international bodies** with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in non-governmental organisations, associations or groups;
- (c) To **communicate with non-governmental or intergovernmental organisations.**

While the Declaration on human rights defenders codifies this as a separate right under Article 9(4), the right to access international bodies can be seen as a corollary of other rights such as the rights to freedom of assembly and freedom of expression (Articles 5 and 6) and the right to freedom of movement, among others.

II. What kinds of violations have human rights defenders faced when attempting to access international bodies?

Cases brought to the attention of international mechanisms show a growing trend of restrictions on the right to unhindered access to international bodies by human rights defenders. Two categories of violations are identified below.

The first category involves measures aimed at **preventing** human rights defenders from attending international human rights meetings or otherwise preventing access of defenders to international human rights mechanisms. Measures may range from confiscation of travel documents and passports to violations of the right to liberty, such as the arrest of human rights defenders to prevent them from attending any meetings dealing with human rights issues.

EXAMPLES

- The UN Special Rapporteur on human rights defenders¹ examined the case of Tajudeen Abduraman, a member of the Centre for Democracy and Development, and Iheoma Obibi, executive director of Alliances for Africa, a regional human rights and development organisation. They were both **arrested** by Nigerian security forces at Lagos airport in December 2002 on their way to a meeting in London. Both were released shortly after their arrest, but their **passports were not returned**.² Their arrest was allegedly aimed at preventing them from attending the meeting in London.
- The UN Special Rapporteur on human rights defenders and the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a letter of allegation concerning an activist, who was reportedly prevented from travelling outside his country to attend a UN conference of Civil Society in Support of Israeli-Palestinian Peace organised by the UN Committee on the Exercise of the Inalienable Rights of the Palestinian People held in the European Parliament Building in Brussels. The defender was due to **present a paper** in which he denounced ongoing human rights violations and called for enforcing international human rights law in the occupied Palestinian territories. Concern was expressed that the **travel ban was imposed due to his peaceful work in defense of human rights** and his critical stance denouncing human rights violations.³
- The UN Special Rapporteur on human rights defenders expressed concern that an activist from the occupied Palestinian territories might be **prevented from traveling to Geneva to attend the Human Rights Council** session in March 2007, and to the Congress of the International Federation of Human Rights in Portugal, in April 2007.⁴

¹ Formerly known as the Special Representative of the Secretary General on Human Rights Defenders prior to the review, rationalisation and improvement of mandates of the Human Rights Council by Council *Resolution 7/8* in March 2008. The Special Rapporteur on human rights defenders is one of the special procedures created by the late Commission on Human Rights. It was established in 2000 and is mandated to monitor the situation of human rights defenders throughout the world and to assist States in the implementation of the Declaration on human rights defenders.

² Report of the Special Representative of the Secretary-General on human rights defenders (2004), E/CN.4/2004/94/Add.3, Para. 356.

³ Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum, Summary of cases transmitted to Governments and replies received, A/HRC/7/28/Add.1, Para. 1235.

⁴ Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum, Summary of cases transmitted to Governments and replies received, 3 March 2008, A/HRC/7/28/Add.1, Para. 1231.

The second category of violations includes **retaliatory actions** against human rights defenders, which may range from harassment, intimidation and threats, to arrest, prosecution and killings, because they have had contacts with international mechanisms or attended meetings.

EXAMPLES

- In December 2008, the UN Special Rapporteur on human rights defenders, in collaboration with several other thematic mandates, sent a joint urgent appeal regarding the murder of a leading indigenous defender from Colombia, Mr Edwin Legarda. Mr Legarda was murdered on his way to receiving his wife, Ms Aida Quilcue Vivas, also an indigenous activist, on her return from Geneva where she had **reported to the Working Group on the universal periodic review**. According to information received by the special rapporteurs, Mr Legarda's murder may have been carried out by soldiers from the Colombian army in retaliation for his **denunciation of extra-judicial executions** carried out by security forces.
- Another case taken up by the UN Special Rapporteur on human rights defenders related to Togo. After the publication of the report of the International Commission of Inquiry on Togo⁵ in 2001, 12 persons who had given testimonies to the International Commission **suffered reprisals by the authorities including intimidations and threats**. As a result, some of them were forced to leave the country in order to avoid any further retaliatory action.
- The UN Special Rapporteur on human rights defenders received information that an activist was being **held incommunicado at detention facilities for trying to share information** regarding alleged acts of torture, poor conditions of detention, and cases of arbitrary detention in Saudi Arabia with different UN human rights mechanisms. Serious concern was expressed that the arrest and detention of the activist may have been in reprisal for his legitimate and peaceful activities in defense of human rights in his country.⁶

Action by State authorities is often not limited to refusals to grant exit visas, seizure of passports, or arrest of human rights defenders to prevent their participation in meetings, as in the cases addressed by treaty bodies such as the Human Rights Committee (HRC). See next section for further examples. The UN Special Rapporteur on human rights defenders has also reported several cases of abuses and reprisals against defenders upon their return from international meetings or after submitting information or complaints to international bodies. Violations included deportation, denied renewal of residence permits, prosecution, and other legal proceedings, intimidation, harassment, disappearances and killings.

⁵ The International Commission of Inquiry was established jointly by the United Nations and the Organisation of African Unity in 2000 at the request of the Togolese Government to investigate allegations of extra-judicial executions allegedly committed during the presidential elections held in June 1998.

⁶ Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum, Summary of cases transmitted to Governments and replies received, 3 March 2008, A/HRC/7/28/Add.1, Para. 1745.

III. How is the right to access international bodies protected?

The **UN Declaration on human rights defenders** codifies and protects the right of human rights defenders to access international bodies and organisations. As seen above, Article 5(c) spells out the right to communicate with non-governmental or intergovernmental organisations, and Article 9(4) protects the right to ‘unhindered access to and communications with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms’.

These two broad formulations cover virtually all aspects of the interaction that may take place between human rights defenders and the diverse array of existing international and regional human rights mechanisms. This interaction may range from a mere request for information, to the submission of reports or individual complaints, and embraces all procedures that a specific organisation may have. Thus, for example, access to a UN treaty monitoring body includes not only participation in its sessions, but also the possibility of submitting an alternative report when the situation of human rights in a specific country is examined or an individual complaint, if applicable.

While the Declaration on human rights defenders specifically refers to the right to access international bodies, this right is not explicitly codified as such in the major international human rights treaties. However, protection is nevertheless ensured through the application of other relevant provisions.

The **UN Special Rapporteur on human rights defenders**, who is mandated to monitor the rights contained in the Declaration on human rights defenders, has examined violations of the right to access international bodies in several countries including Cameroon, Israel, Lebanon, Malaysia, Morocco, Nigeria, the Sudan, Tunisia, Turkmenistan, Uzbekistan, and Zimbabwe.⁷ The Special Rapporteur on human rights defenders has dealt extensively with cases of human rights defenders being prevented from attending human rights meetings or being subject to retaliation for their work with international mechanisms, as seen in earlier examples.

The **UN treaty monitoring bodies** have also dealt with the right to access international bodies. The HRC, for example, has directly addressed cases of restrictions of access to international bodies by human rights defenders (see below). In the absence of a specific provision in the *International Covenant on Civil and Political Rights*, these cases were considered under Articles 12 and 19, respectively protecting the right to freedom of movement and the right to freedom of expression.

In the case of Uzbekistan, for example, the HRC observed:

The Committee is concerned that the State party requires an ‘**exit visa**’ from its nationals for their travel abroad, and in particular that representatives of non-governmental organisations who were refused an exit visa were thereby **prevented from attending meetings on human rights issues** (Covenant,

⁷ Report of the Special Representative of the Secretary-General on human rights defenders (2004), E/CN.4/2004/94, Para. 69.

arts. 12 and 19). The State party **should abolish the requirement** of an exit visa for its nationals.⁸

Similarly, in the case of Morocco, the HRC stated:

The Committee is concerned that some representatives of non-governmental organisations had their **passports confiscated** and were thus prevented from attending a meeting of non-governmental organisations on the question of Western Sahara at the fifty-ninth session of the Commission on Human Rights in Geneva (Covenant, arts. 12 and 19). The State party should apply article 12 of the Covenant to all its nationals.⁹

The former **UN Commission on Human Rights** also addressed this issue and in the past adopted resolutions on ‘Cooperation with representatives of United Nations human rights bodies’ expressing concern and condemning the increasing number of cases of intimidation and reprisals against individuals and groups seeking cooperation with UN human rights mechanisms.¹⁰

The Commission on Human Rights also requested the **UN Secretary-General** to submit a compilation and analysis of all available information on alleged reprisals against persons seeking cooperation with UN human rights mechanisms. In his reports,¹¹ the Secretary-General described situations in which persons suffered reprisals for having cooperated with UN human rights bodies; for having availed themselves of international procedures; for having provided legal assistance for this purpose; or just for being relatives of victims of human rights violations brought to the attention of international mechanisms. In his 2006 report, the Secretary-General documented eight cases from Brazil, China, Nepal, Thailand, Tunisia, and Uzbekistan.

Since the **UN Human Rights Council** replaced the Commission on Human Rights, pursuant to *Decision 2/102*, the Council requested the Secretary-General and the UN High Commissioner for Human Rights to ‘continue with the fulfilment of their activities, in accordance with all previous decisions adopted by the Commission on Human Rights and to update the relevant reports and studies’ on this matter.¹² In February 2009, the Secretary-General accordingly presented updated information on cases of reprisals against private individuals and groups, including human rights defenders, for their cooperation with representatives of UN human rights bodies, and noted that the ‘gravity of reported acts of reprisal reinforces the need for all representatives of UN human rights bodies in cooperation with States to continue to take urgent steps to help prevent the occurrence of such acts and ensure that they are not treated with impunity’.¹³ The report presents a non-exhaustive and cross-regional compilation of examples of retaliation against persons cooperating with a range of UN mechanisms, including the new universal periodic review mechanism, the Working

⁸ Human Rights Committee, Concluding Observations on Uzbekistan, 26 April 2005, §19, CCPR/CO/83/UZB.

⁹ Human Rights Committee, Concluding Observations on Morocco, 1 December 2004, §18, CCPR/CO/82/MAR.

¹⁰ See Commission on Human Rights *Resolution 2005/9* (E/CN.4/RES/2005/9), 2004/15 (E/CN.4/RES/2004/15), 2003/9 (E/CN.4/RES/2003/9), 2002/17 (E/CN.4/RES/2002/17), 2001/11 (E/CN.4/RES/2001/11).

¹¹ Report of the Secretary-General, ‘Cooperation with representatives of United Nations human rights bodies’, 2006 (E/CN.4/2006/30), 2005 (E/CN.4/2005/31), 2004 (E/CN.4/2004/29), 2003 (E/CN.4/2003/34), 2002 (E/CN.4/2002/36).

¹² Progress on reports and studies relevant to cooperation with representatives of United Nations human rights bodies – Report of the Secretary-General, A/HRC/10/36, 6 February 2009.

¹³ Progress on reports and studies relevant to cooperation with representatives of United Nations human rights bodies – Report of the Secretary-General, A/HRC/10/36, 6 February 2009, Para. 21.

Group on enforced or involuntary disappearances, and other thematic mandates of the Human Rights Council.

Conclusion

The use of international mechanisms by defenders acts a good barometer of the accessibility and relevance of these bodies to the work of defenders, just as violations of the right to access international bodies indicate areas that need to be further developed in order to better protect defenders and their right to carry out human rights activities. As seen in this paper, measures that prevent defenders from accessing international bodies or retaliation against defenders for having done so continue to be employed against human rights defenders in order to discourage their engagement with international mechanisms or participation in international meetings. The clear protection of the right to access and communicate with international bodies as provided by the Declaration on human rights defenders is further supported by the work of the treaty bodies, the Special Rapporteur on human rights defenders and other UN bodies, which have elaborated authoritative standards for the protection of this right.

The right to access international bodies, as seen above, is important for human rights defenders on many levels. The right is crucial for both the work of defenders, as well as their own safety. Defenders who work at the national, regional or international levels make important contributions to human rights not only by securing justice for their communities and contributing to the establishment of new standards for the protection of human rights, but also by sharing information and their experiences with the international community. The treaty bodies and special procedures have repeatedly emphasised the extent to which their work depends on the contributions, cooperation and information provided by human rights defenders at the international, regional and national levels. The failure to protect the right of defenders to access international bodies thus not only jeopardises their own personal safety, but the efficacy and legitimacy of international human rights mechanisms, which would otherwise not have such broad access to information regarding violations on the ground.

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ABOUT THIS PUBLICATION

The *Human Rights Defenders Briefing Papers* are a series of six briefing papers providing simple and practical information on rights relevant to the work of human rights defenders. Other papers cover right to freedom of assembly, freedom of association, freedom of expression, access to funding and access to information.

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